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Baker & McKenzie LLP  
Pennzoil Place, South Tower  
711 Louisiana, Suite 3400  
Houston, Texas 77002-2746, USATel: +1 713 427 5000  
Fax: +1 713 427 5099  
[www.bakernet.com](http://www.bakernet.com)

<b>Date</b>	March 9, 2007	<b>Phone</b>	<b>Fax</b>
<b>To</b>	Malgorzata Walicka, United States Patent and Trademark Office	+1 571 272 0944	+1 571 273 8300
<b>From</b>	Michael D. Berger, Ph.D.	+1 713 427 5031	+1 713 427 5099
<b>Client/Matter No.</b>	31175413-005002		
<b>Re</b>	Examiner's Interview on March 7, 2007		
<b>Pages (w/cover)</b>	2		

Examiner Walicka, thank you for the interview and opportunity to comment.

I recommend:

¶4: "2) *E. coli* is enabled, but all cells are not."

¶5: "Applicants' position was that the genes to be used in the claimed method are sufficiently enabled by the activity of the protein they encode, because the genes are defined by their activity/function."

¶6: "Applicants will try to obtain such a statement, but note that the Idealibrary® site is no longer available and definitive proof may not be available."

Best regards,

Mike

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TO: Michael Berger COMPANY:

Application/Control Number: 10/808,717  
Art Unit 1652

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Regarding rejection of claims under 35 USC §112, second paragrphah, the examiner suggested to amend preambles of claims 27 and 33 to contain "increase in acetyl-CoA flux" language.

Regarding rejection of the claims under 35 USC §112, first paragrphah, the Examiner emphasized that

- 1) effects of reduced activity of ackA or pta are not necessary the same as that of double mutation of ackA and pta that was used by the inventor, and  
~~Enabling, no other cell bacteria are~~
- 2) E. coli is not an organism identifying any cell, which is to be used in the claimed method.

Applicants will consider the examiner's concerns. Furthermore, Applicants' position was that the genes to be used in the claimed method ~~do not need to be~~ <sup>are sufficiently</sup> ~~described~~ identified in any other way as by the activity of the protein they encode for, because the ~~the genes are defined by their Activity/Function.~~ ~~claims are not directed to the genes themselves.~~ However, the examiner indicated one has to define the things that he/she uses for a claimed method. Applicants offered to present a list of genes that are currently available for the invention.

Regarding rejection under 35 USC §103, Applicants position was that the prior art by San et al., 2003 was not available on the Internet on the date printed on the first page of the paper, but after priority date of the instant application. The examiner suggested that the Applicants provided a proof of that fact. For example a statement from the editor of Metabolic Engineering. Applicants will try to obtain such a statement, but noted that the original web site is no longer available and definitive proof may not be available.